

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference NO 7617/WO/PCT	FOR FURTHER ACTION	
	See Form PCT/IPEA/416	
International application No. PCT/EP2004/013567	International filing date (day/month/year) 30.11.2004	Priority date (day/month/year) 02.12.2003
International Patent Classification (IPC) or national classification and IPC INV. A23G3/00 A23G1/00 A23P1/08		
Applicant NESTEC S.A.		

<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 5 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input type="checkbox"/> <i>(sent to the applicant and to the International Bureau)</i> a total of sheets, as follows:</p> <ul style="list-style-type: none"> <input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions). <input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box. <p>b. <input type="checkbox"/> <i>(sent to the International Bureau only)</i> a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in electronic form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>
<p>4. This report contains indications relating to the following items:</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Box No. I Basis of the report <input type="checkbox"/> Box No. II Priority <input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability <input type="checkbox"/> Box No. IV Lack of unity of invention <input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement <input type="checkbox"/> Box No. VI Certain documents cited <input type="checkbox"/> Box No. VII Certain defects in the international application <input type="checkbox"/> Box No. VIII Certain observations on the international application

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**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/EP2004/013567

Box No. I Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
 - This report is based on translations from the original language into the following language, which is the language of a translation furnished for the purposes of:
 - international search (under Rules 12.3 and 23.1(b))
 - publication of the international application (under Rule 12.4)
 - international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements*** of the international application, this report is based on (*replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report*):

Description, Pages

1-20 as originally filed

Claims, Numbers

1-20 as originally filed

- a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing

3. The amendments have resulted in the cancellation of:

- the description, pages
- the claims, Nos.
- the drawings, sheets/figs
- the sequence listing (*specify*):
- any table(s) related to sequence listing (*specify*):

4. This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

- the description, pages
- the claims, Nos.
- the drawings, sheets/figs
- the sequence listing (*specify*):
- any table(s) related to sequence listing (*specify*):

* If item 4 applies, some or all of these sheets may be marked "superseded."

**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/EP2004/013567

Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	
	No: Claims	1-20
Inventive step (IS)	Yes: Claims	
	No: Claims	1-20
Industrial applicability (IA)	Yes: Claims	1-20
	No: Claims	

2. Citations and explanations (Rule 70.7):

see separate sheet

**INTERNATIONAL PRELIMINARY
REPORT ON PATENTABILITY
(SEPARATE SHEET)**

International application No.
PCT/EP2004/013567

Re Item V.

1. Reference is made to the following document:

D1 GB 486 090 A (INTERNATIONAL PATENTS DEVELOPMENT COMPANY) 27 May 1938 (1938-05-27)
D2 US-A-5 098 728 (SINGER ET AL) 24 March 1992 (1992-03-24)
D3 EP-A-0 564 077 (KRAFT GENERAL FOODS, INC) 6 October 1993 (1993-10-06)
D4 US-A-4 037 000 (BURGE ET AL) 19 July 1977 (1977-07-19)
D5 US-A-5 607 716 (DOHERTY ET AL) 4 March 1997 (1997-03-04)
D6 US-A-5 505 982 (KRAWCZYK ET AL) 9 April 1996 (1996-04-09)
D7 US-A-5 824 358 (BYE ET AL) 20 October 1998 (1998-10-20)

2. Art. 33(2) PCT

2.1 The wording "in an amount effective to provide ..." and "to provide a slippery mouthfeel ..." in claim 1 are results-to-be-achieved (PCT Guidelines, C-III, 4.7) and not distinguishing technical features. Furthermore, the term "dry" with respect to the term hydrocolloid is of relative nature and any edible component can be considered as a flavouring agent.

Conventional grained sugar confectionery such as icing, nougat, fondant, fudge and chewy sweets comprise sugar crystals dispersed in a continuous sugar syrup phase. The term "sugar glass" does not appear to be delimitable from a continuous sugar syrup phase and thus, the subject matter of claim 1 cannot be differentiated from the above mentioned products which comprise a hydrocolloid and up to 10% fat.

D1 discloses a fondant coating suitable for ice cream made up of dextrose crystals in a dextrose saturated solution comprising gelatine. The fat content is necessarily less than 10% since the only fat containing component, cocoa, in the composition is at about 9.8%.

D2 (table 2(b)) discloses low fat, ready-to-roll icing comprising cocoa powder, milk solids and gums. D3 (examples 1 to 3) discloses low fat chocolate chips comprising cocoa, non-fat milk solids, guar gum and starch. D4 (examples) discloses various fat

free, ready-for-use icings comprising xanthan gum and egg white. D5 (example 13) discloses low fat caramel comprising cocoa powder, guar gum and non-fat milk solids. D6 (examples 13) discloses low fat nougat (not the control) comprising cocoa powder, egg white and cellulose. Example 12 is also relevant. D7 (tables I & II) discloses fat free compositions made up of sorbitol crystals in a plastic sugar phase of maltitol syrup.

Thus, the subject matter of claim 1 is not novel in view of D1 to D7.

Any dependent claim will be allowable if the claim or set of claims to which it refers meets the requirements of the PCT.

- 2.2 Though the method of independent claim 19 concerns the disposing of the composition of claim 1 onto a confectionery product and then drying, the only example in the application as originally filed which incorporates a drying step is example 8. Thus, the term "drying" causes a lack of clarity (Art. 6 PCT) as the scope for which protection is sought is unclear. Thus, the subject matter of independent claim 19 is not novel with respect to D1, D2, D4 and D7 which concern coatings.
- 2.3 The method of independent claim 20 concerns the preparation of the coating whereby the sugar matrix, flavouring, hydrocolloid and milk are combined and dried. Concerning the drying step, the lack of clarity objection above (cf. 2.2) applies *mutatis mutandis*.

In view of D2, D3 and D5 which disclose the combining of a sugar matrix i.e. sugar crystals and sugar syrup, with a hydrocolloid and milk solids, the subject matter of claim 20 is not novel.

3. The problem to be solved of the present application appears to concern the provision of ~~low fat~~ coatings which mimic chocolate coatings in terms of mouthfeel and their preparation. At present, the subject matter claimed does not appear to involve an inventive step (Art. 33(3) PCT) in view of the prior art D1 to D7.